

Message Text

UNCLASSIFIED

PAGE 01 GENEVA 03184 01 OF 02 051107Z

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TO SECSTATE WASHDC 2601

UNCLAS SECTION 1 OF 2 GENEVA 3184

FOR KELLOGG AND SCHWEBEL

EO 11652: NA

TAGS: SREF

SUBJ: TERRITORIAL ASYLUM - MAY 2

1. EIGHTH MEETING. AUSTRALIA INTRODUCED NEW PRE-AMBULAR PARAGRAPH: "MINDFUL OF THE OTHER INSTRUMENTS DEALING WITH ASYLUM AND THE STATUS OF REFUGEES AND STATELESS PERSONS." US, BRAZIL, UK, ITALY, FRANCE, IRAN, NIGERIA AND MALI SUPPORTED. BELGIUM AND USSR URGED DELETION OF REFERENCE TO STATELESS PERSONS AS OUTSIDE MANDATE OF COMMITTEE.

2. BRAZIL INTRODUCED NEW PREAMBULAR PARAGRAPH, INITIALLY SUGGESTED IN WRITTEN COMMENTS OF ROMANIA: "MINDFUL OF PRINCIPLES OF INTERNATIONAL LAW EMBODIED IN UN CHARTER AND IN PARTICULAR TO PRINCIPLE OF UNIVERSAL RESPECT FOR AND OBSERVANCE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR ALL." US SUPPORTED NOTING PROPOSED PARAGRAPH CORRESPONDED IN PART TO PROVISION IN PREAMBLE OF 1951 CONVENTION.

3. AUSTRALIA INTRODUCED NEW OPERATIVE ARTICLE PROVIDING THAT PERSON ENTITLED TO BENEFITS OF CONVENTION MAY NOT BE EXPELLED FROM TERRITORY OF CONTRACTING STATE (A) EXCEPT ON GROUNDS OF NATIONAL SECURITY OR

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PAGE 02 GENEVA 03184 01 OF 02 051107Z

PUBLIC ORDER OR (B) WHEN REQUIRED TO GO TO TERRITORY

OF ANOTHER STATE IN ACCORDANCE WITH ARRANGEMENTS
MADE BY STATES CONCERNED INVOLVING EQUITABLE
SHARING OF BURDEN CAUSED BY MASS OR SUDDEN INFLUX.

4. UNFORTUNATE DRAFTING OF THIS PROPOSAL RESULTED
IN LINKING OF TWO DIFFERENT CONCEPTS. FIRST CONCEPT
SERVES AS LIMITATION ON CATEGORIC OBLIGATION OF
STATE, SET FORTH IN OLD ARTICLE 1, TO ALLOW REFUGEE
TO REMAIN IN ITS TERRITORY ONCE IT HAS GRANTED HIM
ASYLUM. SECOND CONCEPT RELATES TO RESETTLEMENT OF
REFUGEES FROM THE STATE OF FIRST ASYLUM PURSUANT
TO THE OBLIGATION TO SHARE BURDENS CONTEMPLATED
OLD ARTICLE 5, AND IS NOT EXPULSION IN TECHNICAL
SENSE.

5. FOREGOING EXPLANATION IS CONSIDERABLY SIMPLER
THAN DISCUSSION WHICH ENSUED, OF WHICH FOLLOWING
HIGH LIGHTS EMERGE:

(A) FIRST CONCEPT, E.E., EXPULSION FOR NATIONAL
SECURITY OR PUBLIC ORDER, SHOULD BE INCORPORATED IN
OLD ARTICLE 2: FRANCE, ITALY, MEXICO, US, SWEDEN.
OR SHOULD BE STRUCTURED AS SEPARATE PARAGRAPH IN
ARTICLE 2: NIGERIA.

(B) US, SUPPORTED BY SWEDEN, EMPHASIZED DUE PROCESS
ASPECT OF FIRST CONCEPT, I.E., ON GROUNDS SIMILAR TO
ARTICLE 31 OF 1951 REFUGEE CONVENTION. INDIA ASKED
CHAIRMAN TO INDICATE WHICH STATES IN WORLD HAVE DUE
PROCESS AS PART OF THEIR LEGAL SYSTEMS, BUT CHAIRMAN
APPARENTLY DID NOT HEAR QUESTION.

(C) IN DETERMINED STATEMENT US INDICATED ITS
REJECTION OF IDEA OF MANDATORY, IF EVEN FORCIBLE,
RESETTLEMENT CONTAINED IN SECOND CONCEPT. STATE OF
INITIAL ASYLUM AND ASSISTING STATE SHOULD NOT BE
ABLE TO RELOCATE REFUGEES WITHOUT THEIR CONSENT.
RESETTLEMENT OF REFUGEES BY INTERNATIONAL AGENCIES,
AS FOR EXAMPLE IN POST-WORLD WAR II PERIOD, HAS
ALWAYS BEEN WITH CONSENT OF REFUGEE. URGED EITHER
UNCLASSIFIED

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PAGE 03 GENEVA 03184 01 OF 02 051107Z

DELETION OR REDRAFTING OF PROVISION TO TAKE ACCOUNT
OF WISHES OF REFUGEE. SIMILAR POSITIONS BY MEXICO,
BELGIUM AND URUGUAY, PROBABLY BRAZIL.

6. IN DEFENDING HIS PROPOSAL AUSTRALIA INDICATED
CONVICTION THAT DRAFT CONVENTION SHOULD NOT BE
LIMITED TO GRANTING OF ASYLUM, BUT SHOULD ALSO BE
EXTENDED TO THE STATUS OF THE REFUGEE IN THE COUNTRY

WHICH HAS GRANTED HIM ASYLUM. THIS OBVIOUSLY RAISES THE QUESTION OF INTER-RELATIONSHIP AND POSSIBLY CONFLICT WITH THE 1951 CONVENTION AS AMENDED BY THE 1967 PROTOCOL. ALTHOUGH MARGINALLY SUPPORTED BY BELGIUM, THIS IDEA WAS CHALLENGED BY UK AND VIGOROUSLY ATTACKED BY AUSTRIA.

7. NINTH MEETING MARKED BY EFFORTS OF FIRST ASYLUM COUNTRIES TO REVISE ARTICLE 5 (SOLIDARITY) TO STRENGTHEN OBLIGATION OF CONTRACTING STATES TO ASSIST A FIRST-ASYLUM CONTRACTING STATE WHEN, BECAUSE OF MASS OR SUDDEN INFLUX OR OTHER COMPELLING REASONS, LATTER STATE EXPERIENCES DIFFICULTIES IN GRANTING OR CONTINUING TO GRANT BENEFITS OF CONVENTION. INDIAN PROPOSED THAT IN THOSE CIRCUMSTANCES UNHCR OR OTHER BODY CREATED FOR THAT PURPOSE, AT THE REQUEST OF ASYLUM STATE, SHALL TAKE APPROPRIATE MEASURES IN CONSULTATION WITH OTHER CONTRACTING PARTIES FOR THE EQUITABLE SHARING OF THE BURDEN BY OTHER STATES. ITALY PROPOSED THAT IN THOSE CIRCUMSTANCES OTHER CONTRACTING STATES, AT REQUEST OF ASYLUM STATE, THROUGH UNHCR, SHALL TAKE APPROPRIATE MEASURES TO SHARE BURDEN OF LATTER STATE. BELGIUM CRITICIZED INDIAN PROPOSAL FOR RQUIRING UNHCR TO ACT AT REQUEST OF ASYLUM STATE. USSR CRITICIZED INDIAN PROPOSAL FOR GRANTING UNHCR BROAD POWERS TO TAKE INITIATIVE, WITH ONLY CONSULTATION WITH OTHER STATES. US REJECTED BOTH INDIAN AND ITALIAN PROPOSALS ON GROUNDS THAT DECISION ON SCOPE, MANNER AND APPROPRIATENESS MUST BE LEFT TO ASSISTING STATE. US STATEMENT EMPHASIZED OUR GOOD TRACK RECORD IN PROVIDING ASSISTANCE, AND WAS GENTLY PHRASED SINCE ITALY, FOR WHOM THIS ARTICLE IS THE MAJOR ISSUE IN UNCLASSIFIED

UNCLASSIFIED

PAGE 04 GENEVA 03184 01 OF 02 051107Z

THE CONVENTION, HAS BEEN CONSISTENTLY HELPFUL. AUSTRALIA AND UK SUPPORTED US. IRAQ SAID ASSISTANCE SHOULD BE PROVIDED ONLY ON BASIS BILATERAL NEGOTIATIONS. IRAN WAS OPPOSED TO EXTENSION OF POWERS OF UNHCR. SPEAKING FOR UNHCR, LEGAL COUNSEL DADZIE STATED PROPOSALS REQUIRING UNHCR TO TAKE INITIATIVES MIGHT INVOLVE UNHCR IN POLITICAL DECISIONS. UNHCR ACCORDINGLY DID NOT FAVOR INDIAN PROPOSAL, BUT COULD WORK WITHIN TERMS OF ITALIAN PROPOSAL. AUSTRIA MADE EFFECTIVE STATEMENT COMPARING INSISTANCE OF ASSISTING STATES THAT THEY RETAIN FULL DISCRETION WITH CATEGORICAL OBLIGATIONS IMPOSED ON ASYLUM STATES BY ARTICLES 1 - 4 CONVENTION.

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PAGE 01 GENEVA 03184 02 OF 02 051107Z

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UNCLAS SECTION 2 OF 2 GENEVA 3184

FOR KELLOGG AND SCHWEBEL

8. AUSTRIA AND SWDEN PROPOSED SEPARATE BUT EQUIVALENT PROPOSALS FOR NEW ARTICLE THAT NOTHING IN CONVENTION PRECLUDED STATE FROM GRANTING ASYLUM UNDER CONDITIONS MORE FAVORABLE THAN THOSE SPECIFIED IN CONVENTION. (THERE WAS SOME REDRAFTING DURING COURSE OF DISCUSSION). US, BRAZIL, MEXICO, AUSTRALIA, AND UK SUPPORTED PROPOSALS ON GROUND, AS STATED BY SWEDEN, THAT CONVENTION PROVIDES ONLY "MINIMUM EXERCISE OF THE SOVEREIGN RIGHT OF STATES TO GRANT ASYLUM TO SUCH PERSONS THEY MAY WISH". USSR AND FRANCE EXPRESSED DOUBTS ABOUT PROPOSALS. NIGERIA OPPOSED THEM CLAIMING GRANT OF ASYLUM OUTSIDE THE TERMS OF THE CONVENTION COULD BE REGARDED AS UNFRIENDLY ACT.

9. NIGERIA INTRODUCED REVISION OF ARTICLE 10 (REGIME) ADDING CONCEPT THAT FOR PURPOSES OF ARTICLE 10 ACTIVITIES OF FREEDOM FIGHTERS "STRUGGLING TO FREE THEIR COUNTRIES FROM THE CLUTCHES OF COLONIALISM AND RACIST MINORITY REGIMES" COULD NOT BE CONSIDERED CONTRARY TO PURPOSES AND PRINCIPLES OF UN CHARTER. THIS WOULD PERMIT ASYLEES TO CONTINUE FREEDOM-FIGHTING AGAINST THE GOVERNMENTS OF THEIR FORMER HOMELANDS. NIGERIA WAS VISIBLY SURPRISED WHEN USSR LED OFF DISCUSSION BY QUESTIONING THE RELATIONSHIP BETWEEN NIGERIAN PROPOSAL AND ARTICLE 1, AND SUGGESTING THAT FORMER WAS REPETITIVE. NIGERIA FARED

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PAGE 02 GENEVA 03184 02 OF 02 051107Z

WORSE UNDER GENTLE QUESTIONING OF CHAIRMAN WHO INDICATED HE WAS TRYING TO UNDERSTAND PROPOSAL. AUSTRALIA NOTED THAT IN DISCUSSION AT 7TH MEETING MANY PARTICIPANTS SAW LEGAL AND CONSTITUTIONAL DIFFICULTIES WITH ARTICLE 10 (1) AND THAT THERE WAS GENERAL CONSENSUS THAT 10(2) DID NOT BELONG IN CONVENTION. HE SUGGESTED DELETING ARTICLE 10 ALTOGETHER. RATIONALE OF THE PROPOSAL TO DELETE PROVIDED BY UK, WHO POINTED OUT THAT THE FOCUS OF THIS CONVENTION IS ON THE GRANT OF ASYLUM; THE STATUS OF PERSONS ONCE ASYLUM HAS BEEN GRANTED IS REGULATED BY THE 1951 CONVENTION AND 1967 PROTOCOL. WE BELIEVE DELETION OF ARTICLE 10 WILL BE WIDELY SUPPORTED IN COMMITTEE 10. AFTER AFTERNOON MEETING WESTERN GROUP MET WITH AUSTRIA/CHAIRMAN (HIS STATUS WAS INTENTIONALLY NOT ARTICULATED) TO DISCUSS EVENTS OF NEXT WEEK. HE CONTEMPLATES THAT DURING THE SECOND READING (MONDAY, TUESDAY, WEDNESDAY) ALL PROPOSALS DISCUSSED DURING FIRST READING THIS PAST WEEK WILL BE DECIDED, IF NOT BY CONSENSUS THEN BY VOTE. DECISIONS ON ALL PROPOSALS, WHETHER OR NOT ADOPTED, WILL BE DISCUSSED IN REPORT. AN ANNEX TO THE REPORT WILL CONTAIN A COMPILATION OF ALL PROPOSALS ADOPTED BY THE COMMITTEE IN THE SEQUENCE THE ISSUES APPEAR IN THE DRAFT REPORT. THIS WILL IN EFFECT BE A REVISED TREATY RECOMMENDED BY A MAJORITY OF THE COMMITTEE. COMMENT: LIKE ALL METTERNICHTIAN STRATEGEMS, THIS IS GREAT IF IT WORKS: INSTEAD OF A REVISED TREATY WITH AN APPENDED REPORT WE GET AN EQUIVALENT -- A REPORT WITH AN OPEN-ED REVISED TREATY. PROBLEM IS THAT WE HAVE USED UP A WEEK ON THE FIRST READING. WE HAVE ONLY THREE-DAY WEEK OF MAY 5. SECRETARIAT WILL NEED THURSDAY TO PREPARE THE REPORT, AND THE REPORT WILL HAVE TO BE FINALIZED IN COMMITTEE ON FRIDAY. WE MAY END UP REQUESTING TIME LIMITS ON STATEMENTS.

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